

MEMORANDUM TO: James J. Jochum  
Assistant Secretary, Import Administration

FROM: Ronald K. Lorentzen  
Acting Director, Office of Policy

SUBJECT: Issues and Decision Memorandum for the Expedited Sunset Review of the  
Antidumping Duty Investigation on Sorbitol from France; Final Results

Summary

We have analyzed the substantive responses of the interested parties in the sunset review of the antidumping duty investigation covering sorbitol from France. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response from the interested parties:

1. Likelihood of continuation or recurrence of dumping
  - A. Weighted-average dumping margin
  - B. Volume of imports
2. Magnitude of the margin likely to prevail
  - A. Margins from investigation

## History of the Order

On February 12, 1982, the Department of Commerce (“Department”) published its final affirmative determination of sales at less than fair value (“LTFV”) in the *Federal Register* with respect to imports of sorbitol from France. *See Sorbitol from France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6459 (February 12, 1982). On April 9, 1982, the Department published in the *Federal Register* an antidumping duty order on sorbitol from France. *See* 47 FR 15391-2 (April 9, 1982). Since the issuance of the antidumping duty order, the Department has conducted numerous administrative reviews with respect to imports of sorbitol from France.<sup>1</sup>

The Department initiated the first sunset review on October 1, 1998, pursuant to Section 751(c) of the Tariff Act of 1930, as amended (the “Act”). *See Initiation of Five-Year Reviews*, 63 FR 52683 (October 1, 1998). As a result of that review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. *See Final Results of Expedited Sunset Review: Sorbitol from France*, 64 FR 5636 (February 4, 1999). In that determination, the Department also reported to the International Trade Commission (“ITC”) as the likely dumping margin for all French manufacturers or exporters a rate of 2.90 percent. *Id.*

Since then, we completed only one administrative review covering the period 1998-1999. *See Sorbitol from France: Final Results of Antidumping Duty Administrative Review*, 65 FR 7361

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<sup>1</sup>*Sorbitol from France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6459 (February 12, 1982); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 51 FR 42873 (November 26, 1986); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 52 FR 20444 (June 1, 1987); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 53 FR 21506 (June 8, 1988); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 55 FR 6668 (February 26, 1990), *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 65 FR 7361 (February 14, 2000).

(February 14, 2000). We published the results of that administrative review in which no comments were received from the interested parties and found a rate of 12.07 percent for Roquette Freres based on adverse facts available. *Id.*

Background:

On February 2, 2004, the Department published the notice of initiation of the second sunset review of the antidumping duty order on sorbitol from France pursuant to section 751(c) of the Act.<sup>2</sup> The Department received the Notice of Intent to Participate from the domestic interested parties of SPI Polyols, Inc. (“SPI”), Archer Daniels Midland Company (“ADM”), and Roquette America (“RA”), a wholly-owned subsidiary of Roquette Freres, within the deadline specified in section 351.218(d)(1)(I) of the *Department’s Regulations* (“*Sunset Regulations*”). ADM and SPI claimed interested party status under section 771(9)(C) of the Act, as domestic producers of sorbitol. RA claimed interested party status as a domestic producer and as an importer of the subject merchandise. We received complete substantive responses from all domestic interested parties within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).

We received a substantive response from one respondent interested party, Amylum France SAS (“Amylum”), in this proceeding. Amylum’s response accounted for less than 50 percent of the exports of sorbitol from France to the United States.<sup>3</sup> As a result, pursuant to section 751(c)(5)(A) of the Act and 19 CFR 351.218(e)(2)(i), the Department conducted an expedited (120-day) sunset

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<sup>2</sup>Initiation of Five-Year (Sunset) Reviews, 69 FR 4921 (February 2, 2004).

<sup>3</sup>Memorandum to Ronald K. Lorentzen, Sunset Review of Sorbitol from France: Adequacy of Respondent Interested Party Response to the Notice of Initiation (March 16, 2004).

review of this order.

### Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

#### **1. Likelihood of Continuation or Recurrence of Dumping**

##### Interested Party Comments

ADM asserts that revocation of the antidumping duty order of sorbitol from France would result in the continuation of dumping of the order based on findings of continued dumping, the cessation of imports after the issuance of the order, and elimination of dumping during periods in which imports declined significantly. *See Substantive Response of ADM* (February 2, 2004).

ADM states that most of the subject merchandise has been dumped at margins greater than *de minimis* throughout the history of the order. *Id.* ADM also argues that imports declined during periods when dumping was eliminated. *Id.* at 6 and Exhibit 4.

ADM believes that two companies, Amylum (consisting of Amylum France and Amylum SPI Europe) and Roquette Freres, currently produce and export sorbitol from France. ADM states that the Department has never found that Amylum has eliminated dumping, and Amylum has been subject to the “All Others” rate of 2.90 percent since it began exporting to the United States in 2000. *Id.* at 6-7.

With respect to Roquette Freres, ADM believes that the company has increased dumping to maintain or increase market share in the United States for the following reasons. ADM explains that imports of sorbitol from France increased by 2,000 percent from 2002 to 2003, at the same time the average unit value decreased from \$3.32/kg to \$0.38/kg. *Id.* at 8 and Exhibit 4. ADM also argues that the devaluation of the U.S. dollar against the Euro will likely lead to higher antidumping margins because of higher home market prices in dollar terms. *Id.* at 8. ADM also argues that Roquette Freres’ plan to expand capacity in China to serve Asian markets through its acquisition of the Korean Group L.G.’s sorbitol units in Korea and China will give Roquette Freres the opportunity to use excess capacity in its French plants to export additional sorbitol to the United States at less than fair value. *Id.* at 8-9.

Lastly, ADM regards the popularity in low-carbohydrate diets, which include the increased demand for sorbitol and maltitol, gives incentive for Roquette Freres to increase its sales to the United States. *Id.* at 9. Because the same equipment can produce maltitol and sorbitol, ADM notes that if the order is revoked, Roquette Freres can shift sorbitol production back to France and use its U.S. capacity to produce greater quantities of maltitol. *Id.* As a result, ADM maintains that revocation of the order would result in continuation of dumping.

SPI argues that Roquette Freres’ shipments of sorbitol to the United States have been relatively modest because of the presence of this order and because of the establishment of a production facility

in Illinois. *See Substantive Response of SPI* (February 27, 2004) at 3. SPI states that the revocation of this antidumping duty order would likely lead to an increase in sorbitol exports to the United States for several reasons, including: possible U.S. product shifting from sorbitol to higher-valued products to curtail U.S. sorbitol production, increased U.S. demand for sorbitol, and surplus sorbitol production in France. *Id.* In addition, SPI, like ADM, believes the increased strength of the Euro against the U.S. dollar will act to transform a relatively low dumping margin into a relatively high dumping margin. *Id.*

RA supports the preservation of this order because the slow growth in the demand for sorbitol in the European Union (“EU”) cannot consume the significant expansion in sorbitol production, particularly in France. *See Substantive Response of RA* (March 1, 2004) at 2. The EU is the largest global exporter of sorbitol, and therefore, is expected to seek new export markets, such as the United States. *Id.* at 2-3. RA states the EU protects its market with a tariff structure that effectively prohibits U.S. producers from exporting to the EU. *Id.* Also, RA explains that the EU compensates its producers through a system of export refunds for the high internal EU price of grains, the base ingredients of sorbitol, as well as for sorbitol sales outside of the EU. *Id.* Furthermore, in accordance with ADM and SPI, RA contends the much stronger Euro against the U.S. dollar will significantly increase the dumping margin. *Id.* RA believes that a dumping margin of more than 20 percent is likely to prevail if the Department revokes this order. *Id.*

In its substantive response Amylum asserts that it does not manufacture crystalline sorbitol and has not sold, exported, or shipped the subject merchandise to the United States during the period of this sunset review; therefore, it does not anticipate any material effect on its operations if the order were

revoked. *See Substantive Response of Amylum* (March 3, 2004) at 2. Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (“URAA”), specifically the Statement of Administrative Action (“SAA”), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis. *See Sunset Policy Bulletin at section II.A.2.* In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. *See Sunset Policy Bulletin at section II.A.3.*

In accordance with the *Sunset Policy Bulletin*, the Department normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where, *inter alia*, dumping continued at any level above *de minimis* after the issuance of the order. The Department has conducted a number of reviews since issuance of the order in which it found that dumping continued. In particular, in the one administrative review conducted during the five-year period preceding this sunset review, the Department found dumping. The order, therefore, continues to exist and we continue to collect and assess dumping duties on entries of subject merchandise.

Therefore, given that dumping at levels above *de minimis* have continued over the life of the order, the Department determines that dumping would likely continue or recur if the order were revoked.

In its comments, ADM asserts that the Department should also find likelihood on the basis of declining imports. However, using statistics provided by the ITC, the Department finds that imports have fluctuated. Since 1999, we have seen imports decrease initially, perhaps in response to the application of a higher cash rate in 2000, but then increase dramatically in 2003 despite no change in the rate. Compared to 1999 numbers, the figures for volume and value almost doubled in 2003. Therefore, the Department does not agree with ADM's argument that we should find likelihood on the basis of import volumes. Because the dumping margins have continued over the life of the order, the Department does not need to address the other interested party comments. Therefore, the Department determines that dumping is likely to continue or recur if the order were revoked.

## 2. Magnitude of the Margin Likely to Prevail:

### Interested Party Comments

ADM argues that the 12.07 percent figure for Roquette Freres and the 2.9 percent figure for Amylum and all other exporters in the only administrative review after the first sunset review is an acceptable approximation of the dumping margin likely to prevail. *See Substantive Response of ADM at 8-10.* In the alternative, ADM argues that the 2.90 percent rate from the investigation determined in the last sunset review should be used.



### Department's Position

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the ITC the company-specific margin from the investigation for each company. For companies not specifically investigated, the Department normally will provide a margin based on the "All Others" rate from the investigation.

In section II.B.1. of the *Sunset Policy Bulletin*, the Department discussed the legislative history related to the selection of the magnitude of the margin likely to prevail and clarified the preference for selecting a margin "from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place." The Department believes it is appropriate to again report that figure to the ITC as the magnitude of the margin likely to prevail if the order were revoked because it is the only calculated rate that reflects the behavior of exporters without the discipline of a order in place. Therefore, we will report to the ITC the company-specific margins published in the original investigation and the "All Others" rate.

### Final Results of Review

We determine that revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

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Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
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Roquette Freres	2.9
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All Others	2.9
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Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*.

AGREE   X  

DISAGREE           

**ORIGINAL SIGNED**

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James J. Jochum  
Assistant Secretary  
for Import Administration

June 22, 2004

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(Date)